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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,604	10/01/2003	Christopher L. Phan	29939/38777A	4654
4743	7590	01/05/2005	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 6300 SEARS TOWER 233 S. WACKER DRIVE CHICAGO, IL 60606			GEHMAN, BRYON P	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 01/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/676,604	Applicant(s) PHAN, CHRISTOPHER L.	
	Examiner Bryon P. Gehman	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/24/04</u> . | 6) <input type="checkbox"/> Other: _____ |

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 10, lines 1 and 2, the phrase "angles inward" lacks basis for "inward" of what.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-9 and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Inman (5,590,788) in view of Royce (2,316,457). Inman discloses a self-telescoping storage enclosure, comprising a tray including a base wall (21) and a single contiguous sidewall (22-24 and 28), the sidewall including a major wall (24) and a minor wall (28) opposite the major wall, and a right wall (22) and a left wall (23) opposite the right wall, the outer surface of the major wall defining a first major outer width and the outer surface of the minor wall defining a first minor outer width, the first major outer width being greater than the first minor outer width (see column 4, lines 1-4 and 55-59), and wherein the tray can nest with a second tray substantially similar to the first tray and that is inverted and oriented 180 degrees relative to the first tray (see Figure 6). Royce

discloses a self-telescoping storage enclosure, comprising a tray including a base wall (10) and a single contiguous sidewall (16-18-16-20), the sidewall including end walls (18, 20), and a right wall (16) and a left wall (16) opposite the right wall, a notch (26) disposed in each of the right and left walls, and wherein the tray can nest with a second tray substantially similar to the first tray and that is inverted and oriented 180 degrees relative to the first tray (see Figures 3, 4 and 6). To modify the tray of Inman employing the notch teaching of Royce would have been obvious in order to provide a nesting tab to better secure trays to one another, as taught by Royce.

As to claims 2 and 3, the recited relationship between the major and minor walls and the shape of the bottom wall are disclosed by Inman.

As to claims 5 and 12, Royce discloses the notches disposed near the midway of the length of the right and left walls, the exact disposition not providing any unexpected result.

As to claim 6, Royce discloses the notch being approximately half the height of the right and left walls.

As to claims 7-8 and 13-14, Inman discloses the major wall greater in height than the minor wall.

As to claim 11, each discloses an arrangement of plural trays.

5. Claims 1-4, 6-9, 11 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Inman in view of WO 93/11048. Inman discloses a self-telescoping storage enclosure, comprising a tray including a base wall (21) and a single contiguous

sidewall (22-24 and 28), the sidewall including a major wall (24) and a minor wall (28) opposite the major wall, and a right wall (22) and a left wall (23) opposite the right wall, the outer surface of the major wall defining a first major outer width and the outer surface of the minor wall defining a first minor outer width, the first major outer width being greater than the first minor outer width (see column 4, lines 1-4 and 55-59), and wherein the tray can nest with a second tray substantially similar to the first tray and that is inverted and oriented 180 degrees relative to the first tray (see Figure 6). WO 93/11048 discloses a self-telescoping storage enclosure, comprising a tray including a base wall (2) and a single contiguous sidewall (3-4-3-4), the sidewall including end walls (3, 3, 20), and a right wall (4) and a left wall (4) opposite the right wall, a notch (7) disposed in each of the right and left walls, and wherein the tray can nest with a second tray substantially similar to the first tray and that is inverted and oriented 180 degrees relative to the first tray (see Figure 2). To modify the tray of Inman employing the notch teaching of WO93/11048 would have been obvious in order to provide interengaging locking structure between two trays, as taught by WO 93/11048.

As to claims 2 and 3, the recited relationship between the major and minor walls and the shape of the bottom wall are disclosed by Inman.

As to claim 6, WO 93/11048 discloses the notch being approximately half the height of the right and left walls.

As to claims 7-8 and 13-14, Inman discloses the major wall greater in height than the minor wall.

As to claim 11, each discloses an arrangement of plural trays.

6. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Inman in view of one of Royce and WO 93/11048. To provide the trays and dispose them in an inverted manner to one another is disclosed by the combination of Inman with either one of Royce and WO 93/11048.

As to claim 17, WO 93/11048 discloses interengaging the notches with one another.

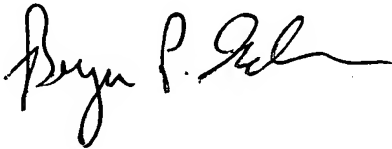
7. Claim 10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are interengaging inverted trays.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-4555.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Bryon P. Gehman', with a stylized, flowing script.

Bryon P. Gehman
Primary Examiner
Art Unit 3728

BPG